

**TESTIMONY OF
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U.S. DEPARTMENT OF COMMERCE
ON
THE MAGNUSON-STEVENSON
FISHERY CONSERVATION AND MANAGEMENT ACT**

**BEFORE THE
SENATE SUBCOMMITTEE ON OCEANS AND FISHERIES
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION**

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Madam Chair and members of the Subcommittee, thank you for inviting me to testify today on implementation and reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). I am Penny Dalton, Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration.

Building a Foundation for Sustainable Fisheries

The fishery resources found off our shores are a valuable national heritage. In 1997, U.S. commercial fisheries produced almost \$3.5 billion in dockside revenues. By weight of catch, the United States is the world's fifth largest fishing nation, harvesting almost 10 billion pounds annually. The United States also is the third largest seafood exporter, with exports valued at over \$3 billion in 1996. In addition to supporting the commercial seafood industry, U.S. fishery resources provided enjoyment for almost 9 million saltwater anglers who caught an estimated 366 million fish in 1997.

As we approach the close of the 20th Century, we are at a crucial point in fisheries management, with considerable work ahead of us. In the 23 years since the enactment of the Magnuson-Stevens Act, we have seen the complete Americanization of fisheries in federal waters, the expansion of the U.S. fishing industry, declines in many fishery resources, and the rise of public interest in fisheries issues. We have seen some successes from our management actions, including the initial rebound of a few depleted stocks like Georges Bank haddock, the rebuilding of Atlantic king mackerel, and the continued strong production of fish stocks off Alaska. However, 12 percent of U.S. living marine resources are overfished or are approaching overfished, 24 percent are not overfished, and there is another 64 percent whose status is unknown. Scientists estimate that we could increase U.S. fishery landings by up to 3 million metric tons by rebuilding fisheries and harvesting them at long-term potential yields.

The Magnuson-Stevens Act, of course, provides the national framework for conserving and managing the wealth of fishery resources found within the 197-mile-wide zone of Federal waters contiguous to the United States. To allow broad-based participation in the management process, the Act created eight regional fishery management councils (Councils) composed of state fishery managers, the regional NOAA Fisheries administrator, and qualified fishing industry, academic, and environmental representatives. Each Council has authority over the fisheries seaward of the states comprising it while NOAA Fisheries has management authority over most highly migratory species (e.g. swordfish) in the Atlantic ocean. The primary responsibility of the Councils is the development of fishery management plans that set the rules for each fishery and meet national conservation and management standards established in the Act.

Over the years, the Magnuson-Stevens Act has changed and evolved through several reauthorizations. In 1996, Congress ushered in a new era in fisheries management, making significant revisions to the Magnuson-Stevens Act in the Sustainable Fisheries Act (SFA). The SFA addresses a number of conservation issues. First, to prevent overfishing and rebuild depleted fisheries, the SFA caps fishery harvests at the maximum sustainable level and requires fishery management plans to rebuild any overfished fishery. NOAA Fisheries reports annually on the health of marine fisheries and identifies fisheries that are overfished or approaching an overfished condition. Second, the SFA sets a new direction for fisheries management that focuses on protecting fisheries habitat. To enhance this goal, the SFA requires that management plans identify habitat that is necessary to fish for spawning, feeding or growth. The new law also clarifies our existing authority to comment on Federal actions that affect essential fish habitat. Third, to reduce bycatch and waste, the SFA adds a new national standard requiring that conservation and management measures minimize bycatch and the mortality of bycatch that cannot be avoided. It also calls for management plans to assess bycatch and to take steps to reduce it.

The new conservation requirements may have far-reaching effects on recreational and commercial fishing and on fishermen, their families and communities. To address this concern, the SFA establishes a new national standard which requires, consistent with conservation objectives, that fishery management plans ensure sustained participation of fishing communities and minimize adverse impacts. In addition, a national standard has been added on promoting the safety of human life at sea. Finally, the SFA provides a number of new tools for addressing problems relating to the transition to sustainable fisheries, including amendments to provide for fisheries disaster relief, fishing capacity reduction programs, vessel financing, and grants and other financial assistance.

Implementation of the Sustainable Fisheries Act

NOAA Fisheries takes seriously its new mandates under the SFA. We are continuing to work to ensure that SFA requirements are implemented, and that conservation and management measures fully protect the resource and provide for the needs of fishing communities and the Nation. A great deal of work remains to be done. We are laying a better foundation for future fisheries management, yet the benefits of the changes made by

Congress in 1996 will take years, perhaps decades, to realize. In addition, the management decisions that we face are becoming ever more complex and contentious, and good solutions are hard to come by. We need to direct resources and effort to the scientific and technical aspects of our work. We also must build consensus with the public and among various stakeholders to facilitate progress in developing management programs that will move us toward the goal of healthy and sustainable marine resources.

Regulations and guidelines. Nearly all of the regulations and policy guidance related to SFA implementation (other than implementing regulations for plan amendments) have been developed and published. These regulations and guidelines address such issues as foreign processing in internal waters, observers' health and safety, procedures for monitoring recreational fisheries, Secretarial emergency actions, and negotiated rulemaking. Proposed regulations for carrying out fishing capacity reduction programs were published in January 1999; final regulations currently are under review in the agency clearance process. However, sectors of the fishing industry that are interested in pursuing buyouts can proceed with the development of buyout plans while this rule is being finalized.

The national standard guidelines were one important area where substantial revisions were necessary because of the significant changes made by the SFA. The national standards are the guiding principles for the management of our Nation's fishery resources, and any management plans or associated regulations prepared by either the Secretary or the Councils must satisfy the criteria which they establish. The Magnuson-Stevens Act requires that the Secretary prepare advisory guidelines on their application to assist in the development of management plans. The guidelines build on the national standards, providing more detailed advice for plan development and a guide to the Secretary in the review and approval of proposed plans and regulations. They were revised to reflect the changes made by the SFA and published as a final rule in May 1998. The final rule addresses the need to end overfishing, reduce bycatch and rebuild stocks, emphasizing use of the precautionary approach. It adds important guidelines on evaluating impacts on fishing communities, and provides guidelines to enhance safety at sea.

Among the changes made by the SFA, one of the most important may be a strengthened standard for preventing overfishing, accomplished by revising the definition of terms used in National Standard 1. The effect of this revision is to cap the optimum yield from a fishery at the maximum sustainable yield (MSY) and require all stocks to be rebuilt to and maintained at levels consistent with MSY. In addition, fishery management plans must establish clear criteria for determining when overfishing of a stock is occurring. NOAA Fisheries has worked with the Councils to develop an understanding of the new requirements to prevent overfishing. The Councils, in turn, have worked hard to develop new overfishing definitions, management programs to achieve the revised goals, and rebuilding programs where stocks were found to be overfished. This has proven to be a very difficult task -- in part because of the complex biological structure of fisheries and complicated calculations of MSY and other fishery parameters -- but also because of the necessity to consider impacts on fishermen and dependent communities while achieving

conservation goals.

The Act calls for ending overfishing and rebuilding the fishery in the shortest time possible, taking into account a number of factors and within 10 years except under certain circumstances. As a result, the national standard guidelines allowed the Councils to take into account potential impacts on the industry or communities to extend the rebuilding period up to the 10-year limit, even when the stock could otherwise be rebuilt in a much shorter period. For long-lived and slow-maturing species like red snapper, the rebuilding period may be as long as the time it would take the stock to rebuild without any fishing plus a period equal to the species generation time. This solution balances the need to meet the conservation requirements within a reasonable period while minimizing effects on the industry and dependent communities.

Another significant change that resulted from passage of the SFA is the increased emphasis of the Magnuson-Stevens Act on conserving and enhancing essential fish habitat (EFH). NOAA Fisheries published a proposed rule in April 1997 for the implementation of the EFH provisions of the SFA, and an interim final rule in December 1997. The extended timeframe was necessary so that all interested groups and individuals had ample opportunity for comments on the rulemaking. These rules establish guidelines to assist the Councils and the Secretary in the description and identification of EFH in fishery management plans, including identification of adverse impacts on such habitat from fishing and identification of other actions to encourage conservation and enhancement of EFH. The rule also provides procedures for EFH consultations on actions that may adversely affect EFH. The interim final rule became effective in January 1998, and is treated as final for the purposes of implementing the EFH provisions. We currently are reviewing the comments received on the interim final rule and plan to issue a final rule early next year. This will enable us to benefit from experience with EFH consultations with other Federal agencies and from the practical experience we will have gained from the first round of fishery management plan amendments on EFH. To date, NOAA Fisheries has conducted over 400 consultations with federal agencies whose actions may adversely affect EFH. We have completed seven agreements with other Federal agencies to establish specific procedures for using existing environmental review processes (e.g., NEPA) to handle EFH consultations, and we are working on 36 more. Federal agencies have been generally receptive to the new consultation requirements and have begun responding to NOAA Fisheries EFH conservation recommendations, as mandated by the Magnuson-Stevens Act. We expect consultations to increase as outreach efforts with Federal agencies continue to build awareness of the EFH statutory requirements.

Turning to Council operations, Council members currently are exempt from conflict-of-interest provisions of the criminal code, as long as they are in compliance with the financial disclosure requirements of the Magnuson-Stevens Act. Concern that these provisions were not adequate to prevent the financial interests of Council members from influencing the decision making process led to their revision in the SFA. As a result, NOAA Fisheries prepared regulations that prohibit Council members from voting on matters that would have a significant and predictable effect on any personal financial

interests disclosed in accordance with existing regulations.

Amending fishery management plans to meet SFA requirements. In addition to revising the national standards, the SFA established a number of other new requirements for fishery management plans that necessitate their amendment. NOAA Fisheries and the Councils have made dedicated efforts to meet most SFA deadlines for 121 major activities and approximately 400 separate tasks to bring fishery management plans into compliance with the new requirements. Commendably, this has been accomplished in a relatively short period of time. The SFA imposed a deadline of October 11, 1998 for amendments to each of the 39 existing fishery management plans to provide: overfishing definitions; measures to prevent overfishing and rebuild overfished stocks; measures to minimize bycatch; descriptions of essential fish habitat ; measures to minimize adverse effects of fishing on habitat; descriptions and analysis of trends in landings for commercial, recreational, and charter sectors; and assessment of effects on fishing communities. As of June 1999, 52 amendments were either approved or partially approved, another two amendments were under Secretarial review, and the remaining 13 amendments were scheduled to begin Secretarial review this summer. Despite the Councils' best efforts, there were some proposed amendments that did not satisfy the requirements, for which the analyses were inadequate, or that did not minimize socioeconomic or environmental impacts to the extent possible and achieve management objectives. NOAA Fisheries disapproved or partially approved those amendments and is working closely with the Councils to improve them, particularly in the areas of overfishing definitions, bycatch reduction measures, and EFH identification and protection.

I cannot over-emphasize the critical role and contribution of the Councils in implementing the SFA and bringing federal fishery management into compliance with its new requirements. The Councils have performed admirably over the years in developing plans, resolving conflicts among stakeholders, and making recommendations to the Secretary, particularly in light of the controversy and conflicts surrounding many fishery decisions. While both NOAA Fisheries and the Councils are adjusting to the changes made by the SFA, we remain committed to working together in the transition to sustainable fisheries.

Turning to the management of wide-ranging Atlantic fish like tunas and billfish, NOAA Fisheries has taken the lead in preparing management plans and rebuilding programs. Of these Atlantic highly migratory species (HMS), the following are currently classified as overfished: bluefin tuna, big eye tuna, Northern albacore tuna, swordfish, blue marlin, white marlin, and the 22 species that make up the large coastal shark management complex. Yellowfin tuna are fully exploited, with a fishing mortality rate that is probably above the levels that support the maximum sustainable yield. This past April, NOAA Fisheries completed a fishery management plan for Atlantic tunas, swordfish and sharks (HMS Plan) and an amendment to the billfish fishery management plan (Billfish Amendment) that contained rebuilding programs. Numerous and substantial changes were

incorporated in the final rule to implement the HMS Plan and Billfish Amendment, based on the thousands of public comments received by the agency. Advisory Panels established under the SFA and composed of representatives of commercial and recreational fishing interests and other knowledgeable individuals, including members of the ICCAT Advisory Committee, participated in the development of the management measures. The final rule became effective July 1, 1999.

Improving technical and scientific information and analyses. Another initiative of the SFA was to establish a new title in the Magnuson-Stevens Act on fishery monitoring and research. NOAA Fisheries is committed to using the best possible science in the decision-making process, and to incorporating biological, social, and economic research findings into fisheries conservation and management measures. Meeting our responsibilities under the Magnuson-Stevens Act and other applicable laws requires collection of a considerable amount of data, and in many fisheries we do not have all the data we need. We will continue to support a precautionary approach in the face of scientific uncertainty. At the same time, we are expanding our collection efforts and, wherever we can, partnering with the states, interstate commissions, fishermen and others to collect and analyze critical data. In addition, we are using a variety of methods to improve public input in the management process and the availability of socioeconomic data to assess and minimize impacts to communities and small entities and to meet the requirements of other applicable laws such as the Regulatory Flexibility Act.

Despite these efforts, we are vulnerable to overlooking or accepting alternatives with unanticipated effects, due to the limitations of our models and underlying data. NOAA Fisheries is addressing this vulnerability by placing a high priority on using funds to fill in gaps, particularly in the area of economic and social data collection and analysis. In January of this year, NOAA Fisheries delivered a Report to Congress entitled *Proposed Implementation of a Fishing Vessel Registration and Fisheries Information System* that calls for innovative state-federal partnerships to improve the quality and quantity of information for marine resource stewardship. Such federal-state partnerships are an important mechanism for sharing resources and reducing duplicative efforts.

Just as important as the collection of timely and complete data is sophisticated modeling to analyze the complex interactions between management measures and various impacts. State-of-the-art modeling techniques that incorporate information from the biological and social sciences, for instance, would improve NOAA Fisheries' ability to make accurate predictions about economic impacts and benefits. As we improve our capabilities to conduct integrated analyses, scientific assessments of the effects of management decisions on both fish and fishermen will be enhanced. This information will enable managers to choose the alternative that best balances conservation needs and community impacts.

Reports to Congress. In addition to the data management report, the SFA required about 20 other studies and reports to Congress that address many critical issues in fisheries management. We will be using the findings and recommendations of these reports to improve our conservation and management programs. They also contain a

great deal of useful information that could inform and guide the reauthorization process.

One of the most thorough and interesting of these reports is the National Research Council's study, *Sharing the Fish: Toward a National Policy on Individual Fishing Quotas* (IFQs), an examination of the issues surrounding the use of such quotas to manage fisheries. The report recommends that IFQ programs be retained as a fisheries management tool. It also contains a number of useful suggestions for developing potential ground rules for and key elements of IFQ programs if they are authorized.

Another NRC report, *The Community Development Quota Program in Alaska*, highlighted some of the current successes of existing CDQ programs, and recommended expanding the programs over the long term to ensure overall success in meeting a variety of community development goals. We look forward to transferring some of the lessons learned to future programs.

Earlier this month, the Federal Fisheries Investment Task Force released its report analyzing the Federal role in subsidizing expansion and contraction of fishing capacity. We will be looking closely at the recommendations in the report, including those that propose to rework existing programs and develop new funding mechanisms, to address problems of overcapacity and resource degradation.

The National Research Council's report entitled *Sustaining Marine Fisheries* and the Ecosystem Principles Advisory Panel's *Ecosystem-Based Fishery Management - A Report to Congress* both advocate greater use of the precautionary approach and an ecosystem-based approach to management. In the latter report, the authors maintain that the burden of proof must shift to the fishery to ensure that the ecosystem will not be harmed by fishing. They also suggest that we develop indices of ecosystem health as targets for management. We will be looking to these reports and others for ideas as we continue to move toward ecosystem-based fisheries management.

Reauthorization Issues

We are still working to understand and effectively implement the changes to fishery management policies and procedures made by the SFA. Consequently, we would not propose major changes to the Magnuson-Stevens Act at this time. However, we have established an internal agency task force to evaluate SFA implementation, and the group has identified some revisions of existing provisions that may be useful to make the management process more efficient and to resolve some relatively minor problems. We currently are reviewing various issues raised by the task force, the Councils, and some of our stakeholders. Among the issues identified are the following:

Review process for fishery management plans, amendments and regulations. The SFA attempted to simplify and tighten the approval process for management plans and regulations. However, one result of that effort has been two distinct review and implementation processes -- one for plans and amendments and another for implementing regulations. This essentially uncouples the process for plans and amendments from the process for regulations, and as a result the decision to approve or disapprove a plan or amendment may be necessary before the end of the public comment period on the implementing regulations. This prevents agency consideration of public comments that could be germane to the decision on plan or amendment approval. We are considering amendments that would modify the process to address this issue.

In addition, the Committee may wish to consider reinstating the initial review of FMPs and FMP amendments by the Secretary. Considerable energy and staff resources are expended on plans or amendments that are ultimately disapproved because of serious omissions and other problems. At present, two to three months must elapse before the Secretary makes his determination, and if the amendment is then disapproved, it can be months or longer before the Council can modify and resubmit the plan or amendment. While the initial review was eliminated by the SFA to shorten the review process, it actually may provide a mechanism to shorten the time it takes to get a plan or amendment approved and implemented.

Restrictions on data collection and confidentiality. As I indicated in the April hearing on this topic, the Magnuson-Stevens Act currently restricts the collection of economic data from processors. Removal of this restriction could improve the quantity and quality of information available to meet the requirements of the Regulatory Flexibility Act and other laws requiring economic analysis. In addition, the SFA changed the term "statistics" to "information" in the provisions dealing with data confidentiality. The change has raised

questions about the intended application of those provisions, particularly with respect to observer information, and Congressional clarification would be useful.

Coral reef protection. Special management areas, including those designated to protect coral reefs, hard bottoms, and precious corals, are important commercial resources and valuable habitats for many species. Currently, we have the authority to regulate anchoring and other activities of fishing vessels that affect fish habitat. Threats to those resources from non-fishing vessels remain outside agency authority except when associated with a Federal action that would trigger EFH consultation or where addressed in regulations associated with a national marine sanctuary. We suggest amending the Act to clarify, consolidate, and strengthen NOAA Fisheries' authority to regulate the actions of any recreational or commercial vessel that is directly impacting resources being managed under the Magnuson-Stevens Act.

Caribbean Council jurisdiction. The current description of the Caribbean Council limits its jurisdiction to Federal waters off Puerto Rico and the U.S. Virgin Islands. As a result, the Council cannot develop FMPs governing fishing in Federal waters around Navassa Island or any other U.S. possession in the Caribbean. Jurisdiction of the Caribbean Council could be expanded to cover Navassa Island, by including "commonwealths, territories, and possessions of the United States" within the description of that Council's authority.

Council meeting notification. Pursuant to the notification requirements of the Magnuson-Stevens Act, Councils spend tens of thousands of dollars a year to publish meeting notices in local newspapers in major and/or affected fishing ports in the region. By contrast, e-mail, public service announcements, and notices included with marine weather forecasts are much cheaper and could be more effective in reaching fishery participants and stakeholders. The Committee may wish to consider modifying notification requirements to allow Council use of any means that will result in wide publicity.

We also look forward to working with the Committee on high-priority policy issues such as observer programs, individual transferable quotas, and funding and fee authorities. We appreciate the concern of the Congress and industry regarding the Administration's fee proposal, and NOAA is interested in working with all relevant parties to develop a viable fee proposal. However, at this time, we have no specific recommendations for changes in the Act to address these issues.

Madam Chair, this concludes my testimony. Thank you for the opportunity to discuss the implementation and reauthorization of the Magnuson-Stevens Act. I am prepared to respond to any questions members of the committee may have.